

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHAEL SPAGNUOLI, KELLIE SHEA, and JOSEPH
VESELAK, individually and on behalf of other persons
similarly situated who were employed,

Plaintiffs,

-against-

LOUIE'S SEAFOOD RESTAURANT, LLC and/or any
other entities affiliated with, controlling, or controlled by
LOUIE'S SEAFOOD RESTAURANT, LLC, and/or
MARTIN PICONE and MICHAEL GUINNANE,

Defendants

No.: 13-CV-4907 (JMA)(ARL)

**DECLARATION OF LLOYD R. AMBINDER IN SUPPORT OF PLAINTIFFS'
MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS AND FOR
APPROVAL OF SERVICE AWARDS**

I, Lloyd R. Ambinder, declare as follows:

1. I am a partner in the firm of Virginia & Ambinder LLP ("V&A") in New York, New York, and Plaintiffs' counsel herein.

2. Along with lawyers from Leeds Brown Law, PC ("LBL") (together with V&A, "Class Counsel"), I am one of the lawyers primarily responsible for prosecuting Plaintiffs' claims in this action and am therefore fully familiar with the facts stated herein.

3. This declaration is submitted in support of Plaintiffs' unopposed motion for approval of attorneys' fees and costs and for approval of service awards, which is being submitted in connection with Plaintiffs' unopposed motion for preliminary approval of the proposed settlement.

4. Class Counsel spent significant effort to achieve the One Hundred and Seventy Thousand Dollars (\$170,000.00) settlement. Class Counsel conducted thorough investigations of

Plaintiffs' claims, including conducting legal research on the underlying merits, the likelihood of class certification, the conditional certification of the FLSA collective, the potential for obtaining liquidated damages and an extended FLSA statute of limitations, the proper measure of damages, and Defendants' affirmative defenses. Class Counsel also spent considerable time on formal and informal discovery, included drafting demands, reviewing Defendants' responses, and reviewing hundreds of pages of documents.

5. Class Counsel also engaged in ongoing communications with Named Plaintiffs and many putative class members throughout the litigation. Class Counsel reviewed additional documents and materials on behalf of class members exchanged during discovery, settlement negotiations, and due diligence process built into the settlement processes.

6. Class Counsel successfully negotiated this settlement over the course of several weeks in various in person and telephonic conferences with Defendants' counsel.

7. Those negotiations ultimately resulted in the drafts of the settlement documents, including the agreement, proposed notice, proposed claim form, and proposed order.

8. In performing these tasks, V&A expended approximately 304 hours of attorney, paralegal, and staff member time, and LBL expended approximately 584 hours of attorney, paralegal, and staff member time – for an aggregate lodestar of \$309,455.11. In addition, Class Counsel undertook to prosecute this action on a wholly contingent basis without any assurance of payment.

9. These hours are reasonable for this case and were compiled from contemporaneous time records maintained by each attorney, paralegal, and support staff participating in the case. V&A's time and costs records are attached hereto as **Exhibit A**. *See also* LBL time and costs attached to the Declaration of Michael A. Tompkins ("Tompkins Decl.").

10. In addition to the time that Class Counsel has spent, we also expect to spend considerable time preparing for and attending the final fairness hearing and administering the settlement in the future. In Class Counsel's experience, based on the number of potential class members and size of the proposed settlement, this work will include responding to inquiries regarding the settlement and settlement checks, requiring a substantial and ongoing commitment.

11. As typical in these class and collective settlements, we anticipated that Class Members will continue to seek legal advice about their rights and/or their participation for several months after this application is filed.

12. Class Counsel undertook to prosecute this action without any assurance of payment for their services, litigating this case on a wholly contingent basis in the face of significant risk.

13. Class Counsel are experienced litigators who have successfully represented classes in numerous class actions and have considerable experience in labor law cases.

14. Class Counsel has obtained final approval of numerous class-wide settlements in the past five years. *See e.g., Macaluso v. Woodbury International, Inc.*, Index No. 3216/2012 (Sup. Ct., Nassau Cty., Sept. 9, 2015); *Chhab v. Montclair Hotels GCNY, LLC*, Index No. 2358/2012 (Sup. Ct. Nassau Cty., July 14, 2015); *Lopez v. Bethpage Associates*, Index No. 003465/2012 (Sup. Ct. Nassau Cty. Aug. 22, 2015); *Parada v. Westbury Manor Enterprises, Inc.*, Index No. (Sup. Ct. Nassau Cty., July 1, 2014); *In re: Penthouse Executive Club Compensation Litigation*, 10-CV-1145 (KMW) (S.D.N.Y. Jan. 14, 2014); *Chavarria v. Crest Hollow Country Club at Woodbury, Inc.*, Index No. 017464/2011 (Sup. Ct. Nassau Cty., Comm. Div., Dec. 13, 2013); *Khaimov v. JEM Caterers of Roslyn, LLC*, Index No. 3215/2012 (Sup. Ct. Nassau Cty., Oct. 16, 2013); *Ruiz v. Scotto's Smithtown Restaurant Corp.*, Index No. 600317/2010 (Sup. Ct. Nassau

Cty., June 17, 2013); Toledo et al. v. DCJ Catering Corp., Index No. 600994/2011 (Sup. Ct. Nassau Cty., Dec. 13, 2013); McBeth v. Gabrielli Trucking, 09-CV-4112(LDW) (E.D.N.Y. 2011).

15. Class Counsel has also recently obtained final approval in several settlements, concerning unpaid interns. *See* Grant v. Warner Music Group Corp., Case No. 13-CV-4449(PGG) (S.D.N.Y. March 11, 2016); Ojeda v. Viacom Inc., Case No. 13-cv-5658(GWG) (S.D.N.Y. Dec. 2, 2015) (obtaining final approval of the settlement on behalf of thousands of unpaid interns); Vitetta v. Sirius XM Radio Inc., Case No. 14-2926(VEC) (S.D.N.Y. Dec. 18, 2015); Arias v. Clear Channel Broadcasting, Inc., Case No. 14-CV-5088(SN) (S.D.N.Y. Feb. 2, 2016).

16. Additionally, V&A and LBL have served as co-counsel together on numerous wage and hour class and collective actions, such as: Weinstein v. Jenny Craig Operations, Inc., 2011/105520 (Sup. Ct. N.Y. Cty., Oct. 24, 2013) (granting certification to workers at Jenny Craig locations across New York state); Williams v. Air Serv Corp., 108648/2010 (Sup. Ct. N.Y. Cty., April 19, 2013); Marcus et al. v. AXA Advisors, LLC, 11-CV-2339 (SJ)(SMG) (E.D.N.Y., June 26, 2012) (granting nationwide conditional certification under the FLSA of nearly 3,000 financial service workers).

17. V&A has further represented scores of workers in other class and collective actions, examples of which include: Espinoza v. 953 Assocs. LLC, 280 F.R.D. 113, 129-130 (S.D.N.Y. 2011) (Scheindlin, J.); Lujan v. Cabana Management, Inc., Index No. 10-cv-755 (E.D.N.Y. Feb. 1 2011) (Block, J.); Zepeda v. Franari Produce Distributors Inc., (EDNY 10-cv-2588) (Bianco, J.); Kopacz v. St. Paul Fire and Marine Insurance Co., Index No.: 111154-2008 (Sup. Ct. N.Y. Co. 2011); Dabrowski v. ABAX Inc., 2010 NY Slip Op 31981U, aff'd 4 A.D.3d 633 (1st Dept. 2011); Cardona v The Maramont Corp., 2009 NY Slip Op 32695U (Sup. Ct. N.Y. Co. Nov. 12, 2009); Kudinov v. Kel-Tech Construction Inc., 65 A.D.3d 481 (1st Dept. 2009); Morris v. Alle

Processing, Corp., Docket No. 08-CV-4874 (E.D.N.Y. Dec. 22, 2009); Nawrocki v. Crimson Construction, Docket No. 08-CV-3153 (E.D.N.Y. June 17, 2009); Cox v. Nap Construction Company, Inc., Index No. 11179/03 (Sup. Ct. N.Y. Co. 2004) (Cahn, J.), *aff'd*, 10 N.Y.3d 592 (2008); Galdamez v. Biordi Constr. Corp., 13 Misc. 3d 1224A (Sup. Ct. N.Y. Co. June 8 2006), *aff'd* 50 A.D.3d 357 (Apr. 8, 2008); Gonzalez v. Nicholas Zito Racing Stable, Inc., 2008 U.S. Dist. LEXIS 27598 (E.D.N.Y. Mar. 31, 2008); Guzman v. VLM, Inc., 2008 U.S. Dist. LEXIS 15821 (S.D.N.Y. Mar. 2, 2008); De La Cruz v. Caddell Dry Dock & Repair Co., Inc., Index No.: 26220-2002 (Sup. Ct. Bronx. Co. Jan. 9, 2007); Brandy v. Canea Mare Construction, Inc., 4 A.D.3d 512 (2nd Dept. 2006); Rodriguez v. Apple Builders & Renovators, Inc., et al., Index No.: 114971-2005 (Sup. Ct. N.Y. Co. Nov. 1, 2006); Hoffman v. New York Stone Co., Index No.: 111823-2005 (Sup. Ct. N.Y. Co. Sept. 29, 2006); Wysocki v. Kel-Tech Construction, Inc., Index No.: 603591-2003 (Sup. Ct. N.Y. Co. Sept. 26, 2005); Velez v. Majik Cleaning Serv., 2005 U.S. Dist. LEXIS 709 (S.D.N.Y. Jan. 19, 2005); Alfaro v. Vardaris Tech, Inc., 69 A.D.3d 436 (1st Dept. 2010); Barone v. Safway Steel Products, Inc., 2005 WL 2009882 (E.D.N.Y. 2005); Brunson v. City of New York, 94 Civ. 4507 (S.D.N.Y.); Andrejuk v. National Environmental Safety Co. Inc., 94 Civ. 4638 (S.D.N.Y.); Pesantez v. Boyle Environmental Services, Inc., Index No. 128988/93 (Sup. Ct. N.Y. Co. 1998) (Cahn, J.), *aff'd* 251 A.D.2d 11, 673 N.Y.S.2d 659 (1st Dept. 1998); Sullivan v. True Plumbing and Heating Corp., et al., Index No. 600409/95 (Sup Ct. N.Y. Co. 1997) (Gammerman, J.), *aff'd sub. nom.*, Sullivan v. International Fidelity Co., 225 A.D.2d 128, 679 N.Y.S.2d 391 (1st Dept. 1998).

18. Class Counsel used a small team of attorneys in order to minimize duplication of efforts and maximize billing judgment and made every effort to have the work performed by the attorney or paralegal with the lowest hourly rate who was able to effectively perform it.

19. LBL and V&A have worked together on dozens of class and collective cases, and have successfully prosecuted and settled cases together. The firms know how to efficiently work together to minimize unnecessary work and ensure that Plaintiffs and class members are well represented throughout the course of the litigation and through the settlement processes.

20. Class Counsel also requests \$2,224.38 in out of pocket expenses to be paid from the QSF. Class Counsel incurred actual expenses of \$2,224.38 for costs such as court and process server fees, postage and courier fees, costs to the administrator for sending notice and processing consent to join forms from the FLSA collective, transportation, deposition costs, discovery costs, photocopies, and legal research. These expenses were incidental and necessary to the representation of Plaintiffs and the Class.

21. I am a 1989 graduate of Brooklyn Law School and has exclusively practiced as an attorney in litigation of wage and hour claims. I have litigated in excess of 500 wage & hour cases, on behalf of at least 20,000 workers, including numerous high profile class actions that have been reported in the New York Daily News, the New York Post and the New Jersey Star Ledger. Lloyd has also argued a number of first impression cases which have had a lasting influence on employment law in New York and New Jersey. I have been a panelist at symposiums sponsored by the National Alliance For Fair Contracting, the National Conference of Unions and Employee Benefit Funds, the New York County Lawyer's Association, and the Nassau County Bar Association, where he lectured on public contracting and labor law, class actions, and prevailing wage and overtime law. I am rated as an "AV Preeminent Attorney" by Martindale Hubbell for Ethical Standards and Legal Ability. I normally bill at a rate of \$525.00 per hour with a designation of "LRA" or "LA" on V&A's billing records.

22. LaDonna Lusher a 1997 graduate of West Virginia State University and a 2004 graduate of the University of Baltimore School Of Law. I have been practicing for over 10 years exclusively in litigation of employment and wage and hour claims and have represented tens of thousands of workers. I also routinely serve as V&A's appellate counsel and have successfully won multiple appeals in the First and Second Departments. Prior to joining V&A, I clerked for the Honorable Timothy E. Meredith of the Court of Special Appeals in Annapolis, Maryland. I have authored several articles on employee rights, including an article on the rights of unpaid interns that was published in U.S. News & World Report. I have been a panelist at multiple symposiums, and a featured guest speaker lecturing on minimum wage, overtime laws, unpaid internships and class actions. I am also a board member of the Autism Legal Foundation, Inc., a non-profit organization where I provide counsel related to discrimination in housing, employment and other areas faced by adults on the autism spectrum. I bill at an hourly rate of \$425.00 per hour and am often referred to as "LML" or "LL" on V&A's billing records.

23. Associate Suzanne Leeds Klein is a 2003 graduate of the Cornell University School of Industrial and Labor Relations, and a 2006 graduate of Fordham University School of Law. Ms. Klein joined V&A in 2011. Prior to joining V&A, Mrs. Klein worked for Lewis Brisbois Bisgaard & Smith LLP and Paul, Weiss, Rifkind, Wharton & Garrison LLP in their litigation practice groups. Ms. Klein also serves as V&A trial counsel. Ms. Klein bills at a rate of \$395.00 per hour and is often referred to as "SL" on V&A's billing records.

24. V&A paralegals and support staff bill out at a rate of \$100.00 to \$125.00 per hour.

25. Numerous courts have approved the same or similar hourly rates for V&A attorneys, paralegals, and support staff. *See e.g. Espinoza v. 953 Assocs. LLC*, 280 F.R.D. 113, 130 (S.D.N.Y. 2011) (Judge Shira A. Scheindlin approving V&A partners at \$550 per hour,

associates at \$395.00 per hour, and paralegals at \$125.00 per hour); Garcia et al. v. The Executive Club (S.D.N.Y. 10-cv-1545) (Judge Stein approving same hourly wage rates); Sandoval et al. v. Galaxy Gen. Contr. Corp., et al., No. 10-CV-5771 (S.D.N.Y. Aug. 23, 2013) (Judge Gardephe approving same); Aparicio v. Iguana New York LTD. (SDNY 11-cv-1830) (Judge Pauley approving V&A partners at \$550 per hour, associates at up to \$425 per hour, and paralegals at \$125 per hour); Sandoval et al. v. Galaxy Gen. Contr. Corp., et al., (S.D.N.Y. 10-CV-5771) (Judge Gardephe approving same hourly wage rates); Perez et al. v. AC Roosevelt Food Corp. et al. (EDNY 10-cv-4824) (in contested fee application, Judge Gleeson approving hourly rates of \$525.00 for partners, \$395.00 for associates, \$225.00 for accountants, and \$125.00 for paralegals); Kaloo v. Unlimited Mech. Co. of NY, 977 F. Supp. 2d 209 (E.D.N.Y. 2013) (in contested fee application after successful bench trial, Judge Gershon approving V&A's voluntarily reduced billing rates of \$495.00 for partners, \$325.00 for associates, and \$100.00 for paralegals); Paguay v. Barbasso, Inc., (S.D.N.Y. 11-CV-6266) (in contested fee application after successful jury trial, Judge Caproni approving \$525.00 for partners, \$365.00 for associates, \$200.00 for junior associates, and \$125.00 for paralegals); McBeth, et al. v. Gabrelli Truck Sales Ltd., et al. (EDNY 09-cv-4112) (Judge Wexler approving hourly rates of V&A partners at \$495.00 per hour, of counsel at \$425.00 per hour, associates at \$325 to \$395 per hour, and paralegals at \$95.00 to \$150.00 per hour).

Dated: New York, New York
Oct. 30, 2017

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/s/
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